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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/713,320 | 11/14/2003 | Gerhard Muller | 30051/39651 | 1240 |
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| MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606 | | | | |
| | | | EXAMINER PRICE, RICHARD THOMAS JR | |
| | | | ART UNIT 3643 | PAPER NUMBER |

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/713,320

Applicant(s)

MULLER, GERHARD

Examiner

Thomas Price

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The labeled representations in no way show the interaction and relative movement of the various elements, and because of such, the Examiner believes that additional detail is essential for a proper understanding of the invention.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the

(1) the clip module comprises a part which is adapted to be rotatably driven by the vacuum filler and by means of which the clip module can be driven (claims 2 and 3);

(2) the shaft being connected to the vacuum filler for driving the clip module (claim 4);

(3) the clip module comprises a displacer (claim 5);

(4) means provided for inserting one of a thread and a loop when the clips are being set (claim 6);

(5) a separator(16) is provided for separating respective portions(claim 7);

(6) a servomotor of the vacuum filler used for driving the clip module(claim 8);

(7) a twist off unit is provided adjacent to a stuffing means for the vacuum filler(claim 10);

(8) the suspension unit being one of controlled and driven by the vacuum filler and clip module;

(9) servomotor is adapted to be used for one of twisting off and for driving other functions;

(10) the control circuit is provided for additionally one of positioning, clipping, and both positioning and clipping;

(11) one of the thread and loop is attached when the clip is being set
must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing.

Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

Specification

Is it the Applicant's position that "the clip module having apart which is rotatable driven and by means of which the clip module can be driven" is "well known in the art". The Examiner considers himself to be one of ordinary skill in the art, and despite this, does not understand, for example, "how the clip module is rotatably driven by a part".

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The claimed "control circuit" in claim 19 lacks prior antecedent basis in the specification.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 2-8, 10, 11 and 17-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In regards to claims 2 and 3, the clip module having a **part** which is adapted to be rotatably driven by the vacuum filler and the clip module having a **part** which is rotatably driven and by means of which the clip module can be driven is not shown in any way, nor is there sufficient discussion in the specification to understand how such a feature operates.

As for claim 4, the shaft being connected to the vacuum filler for driving the clip module is not clearly shown in any manner, nor is there sufficient discussion in the specification in order to understand how such a claimed feature works.

Regarding claim 5, displacer 7 is merely shown as two lines 7a and 7b in the drawings. The Examiner cannot discern from the drawings and the specification as to how these elements function.

Similarly, in claim 6, inserting one of a thread and a loop **when** the clips are being set. Claim 7, the separator 16 is not shown and the specification is lacking as to how this element functions. Claim 8, a servomotor used for **driving** the clip module. Claim 10, the twist off unit is not clearly shown nor discussed in the specification. Claim 11, the suspension unit being one of controlled and driven by the vacuum filler and the clip module. Claim 17 is dependent upon a previously rejected claim 4. See also claims 18-20.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kupcikevicius et al U.S. Patent 4,044,426.

Kupcikevicius et al teach a stuffing apparatus having a vacuum filler and a clip module driven by the vacuum filler. A control unit is provided. The remaining claim language "for stuffing a casing", "for applying a clip" and "for controlling the stuffing, the portioning and the clipping" are considered to be functional claim language which does not patentably distinguish the claimed invention over the reference to Kupcikevicius et al. Vacuum fillers broadly read on a variety of equipment, from pump, fans, and hydraulic pistons. Each can cause of a vacuum to form in order to move a fluid material. The clip unit is operated by a series of valves and hydraulic lines, see Figure 12, elements 120, 122, 124, 126, 141, 143, etc.. in that a vacuum needs to be used to withdraw the fluid resulting in movement of the clip unit. Element 132 acts as a vacuum source for the sausage material loaded into element 134. Although the reference to Kupcikevicius teaches separate vacuum sources, one for the hydraulic system operating the clip module and the second vacuum source to fill the casing, the Examiner believes to combine these elements to operate under the same motor would have been obvious to a person of ordinary skill in the art at the time the invention was made because it has been held that combining two elements into one involves only routine skill in the art. Howard v. Detroit Stove Works, 150 U.S. 164 (1893).

Response to Arguments

With regards to Applicant's argument that the reference to Kupcikevicius does not teach or disclose a stuffing apparatus having a vacuum filler and a clip module driven by a motor of the vacuum filler, see the above mentioned discussion of the reference to Kupcikevicius.

Response to Amendment

Applicant's arguments filed 07-22-2005 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Conclusion

Summary: Claims 1-11 and 17-20 are rejected.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Price whose telephone number is 571-272-6892. The examiner can normally be reached on Monday through Friday from 8:30a.m. to 5:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Thomas Price
Primary Examiner GAU: 3643

rtp